

because the grantor, as administratrix, had no power to make such a deed, I understand the defendants as making no such objection to it, as a conveyance of the realty therein mentioned; and as also assuming the ground, that unless it can avail the plaintiff as a deed proceeding from the administratrix, who alone, among the grantors, had the power thus to sell, or pledge the personalty, it must fail as to that altogether. I shall, therefore, as regards this position, consider this deed as embracing nothing more than the property therein specified as the assets which *Elizabeth Clagett* held as the administratrix of *William Clagett*, deceased.

An executor or administrator is, in equity, regarded as a trustee; but then, in equity, as well as at law, an administrator is considered, in general, as the absolute owner of the assets of the deceased, whether they be legal or equitable, or *choses in action*. The exercise of the powers of unqualified ownership to a certain extent is indispensably necessary to enable him to execute his trust, and to discharge his duty to advantage, and also to prevent the general inconvenience of implicating and entangling third persons in inquiries as to the application he may propose to make of the money produced by the conversion of the assets. A fair purchaser for a valuable consideration is, in no way, bound to see to the application of the purchase money by an executor. He cannot have the means of knowing the debts of the deceased; and is, therefore, absolved from all inquiry respecting them. Upon these general principles, not even a creditor of the deceased is permitted to follow the assets so aliened; for the demand of a creditor is only a personal demand against the executor in respect of the assets come to his hands, but no lien on the assets. And a specific or residuary legatee can stand upon no higher ground, in this respect, than a creditor. (*k*)

The only qualification of this general rule is, where the transaction is, in some way, tainted by fraud. Every person who acquires personal assets by a breach of trust, or *devastavit* in the executor or administrator is responsible to those entitled under the will, or as creditors, or next of kin, if he be a party to the breach of trust. What will amount to a fraud of this kind must depend upon the circumstances of the case. It is said, that generally speaking, he does not become a party to the breach of trust by

---

(*k*) *Nugent v. Gifford*, 1 Atk. 463; *McLeod v. Drummond*, 14 Ves. 359; S. C. 17 Ves. 153; *Keane v. Robarts*, 4 Mad. 357; *Power Morg.* 126, note.